

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:  <b>Jimmie L. Scott</b> <b>Homewood Circle STS/UAD</b> <b>Eastaboga, Talladega County, Alabama</b>	) ) ) ) ) ) ) ) ) ) ) )	Order No. 20 -XXX -ST/SW

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended; the Alabama Scrap Tire Environmental Quality Act (hereinafter “ASTEQA”), Ala. Code §§ 22-40A-1 to 22-40A-24, as amended; the Solid Wastes and Recyclable Materials Management Act (hereinafter “SWRMMA”), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management’s (hereinafter “ADEM” or “the Department”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Jimmie L. Scott (hereinafter “Mr. Scott”) is the owner of the real property located at 684 Homewood Circle, Parcel ID 07-02-03-00-0-001-600.1, in Eastaboga, Talladega County, Alabama (hereinafter “the Site”) and is responsible for the creation of an unauthorized scrap tire site and an unauthorized solid waste dump (hereinafter “STS/UAD”) on the Site, which is the subject of this Administrative Order.
2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Department is a duly constituted department of the State of Alabama.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code § 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.
4. Pursuant to Ala. Code § 22-40A-11, as amended, the Department is the state agency authorized to administer and enforce the provisions of the ASTEQA, Ala. Code §§ 22-40A-1 to 22-40A-24, as amended.

5. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

6. Pursuant to Ala. Code § 22-40A-5(a), as amended, and ADEM Admin. Code r. 335-4-2-.01(2), the person who created or maintained a scrap tire site shall be responsible for the remediation of the site. If the person is not determined, the landowner or the financial interest holder shall be responsible for remediation of the site, unless the landowner or financial interest holder qualifies as an innocent landowner.

7. On May 3, 2019, Department personnel conducted an inspection of the Site in response to a citizen complaint and documented the existence of a STS/UAD. A review of Talladega County property records revealed Mr. Scott as the owner of the property. At the time of the inspection Mr. Scott was residing on the Site. The inspection and a review of Mr. Scott's compliance with certain requirements of Divisions 4 and 13 of the ADEM Admin. Code revealed the following:

a. Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

During the May 3, 2019 inspection, Department personnel observed forty cubic yards of household waste open dumped on the Site, thereby constituting the creation of an unauthorized dump.

b. Pursuant to ADEM Admin. Code r. 335-4-4-.01(1), no person may accumulate more than 100 scrap tires, except a permitted processor, a person who

registers as required in ADEM Admin. Code r. 335-4-3-.01(2), or a permitted SWDF [Solid Waste Disposal Facility]. No person may expose scrap tires to the elements for more than thirty days.

During the May 3, 2019 inspection, Department personnel observed an accumulation of approximately 105 whole scrap tires on the Site. A review of departmental records revealed that Mr. Scott had not registered with the Department as a receiver of scrap tires or obtained a scrap tire processor or SWDF permit; therefore, the accumulating of scrap tires on the Site without the obtainment of the aforementioned registration document or permits from the Department constitutes the creation of an illegal scrap tire site.

8. On May 8, 2019, the Department issued to Mr. Scott a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the STS/UAD and the submittal of documentation attesting to the complete remediation of the STS/UAD and the proper disposal of all regulated solid wastes.

9. On May 13, 2019, the NOV was delivered to Mr. Scott's residence via Certified Mail.

10. The Department has not received a written response to the NOV.

11. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each

day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

a. SERIOUSNESS OF THE VIOLATION: The Department has considered the general nature and magnitude of each violation and determined the violations constituted a significant deviation from the requirements applicable to scrap tire management and solid waste disposal. The Department is unaware of any irreparable harm to the environment; however, the STS/UAD may pose a threat to human health or safety of the public due to the possible presence of disease vectors.

b. THE STANDARD OF CARE: In considering the standard of care manifested by Mr. Scott, the Department noted the violations cited herein were non-technical and easily avoidable. Consequently, Mr. Scott has failed to exhibit a standard of care commensurate with the applicable regulatory standards set forth in Divisions 335-4 and 335-13 of the ADEM Admin. Code.

c. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Scott has realized a significant economic benefit as a result of the violations noted.

d. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by Mr. Scott to mitigate potential effects upon the environment that may have been caused as a result of the violations cited herein.

e. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. Scott does not have a documented history of violations of the applicable requirements of Divisions 335-4 or 335-13 of the ADEM Admin. Code.

f. THE ABILITY TO PAY: The Department does not have any evidence indicating that Mr. Scott is unable to pay the civil penalty.

12. OTHER FACTORS: Pursuant to Ala. Code §22-40A-19(e), as amended, a fine of five dollars (\$5) per tire shall be assessed against any party who accumulates, transfers, transports, processes, or engages in unauthorized disposal of scrap tires. This

fee shall be in addition to all other fines or penalties assessed. In consideration of the aforementioned statutory requirement, the Department has enhanced the civil penalty accordingly.

13. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violations cited herein (See Attachment A, which has been made part of the Department's Findings).

### **ORDER**

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-11, 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, Mr. Scott shall pay to the Department a civil penalty in the amount of \$7,525 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

All checks shall reference Mr. Scott's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Scott shall cease and desist from operating the STS/UAD.

C. That, within thirty days of issuance of this Order, Mr. Scott shall submit a closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)(1) and ADEM Admin. Code r. 335-4-2-.01(6). This plan shall include a schedule

for remediation and closure completion. Mr. Scott shall implement the closure plan and remove all scrap tires and solid waste onsite to an approved landfill unit within ninety days of issuance of this Order.

D. That, within thirty days of completion of remediation activities, Mr. Scott shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of tires and solid waste removed from the Site.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the Site.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the Site taken before and after remediation.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.
7. Documentation that the Site has been secured to prevent any future illegal dumping.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

F. That, the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Scott for the violation cited herein.

G. That, failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against Mr. Scott for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Lance R. LeFleur  
Director

**Attachment A**

Jimmie Scott

Homewood Circle Unauthorized Solid Waste Dump and Scrap Tire Site  
Eastaboga, Talladega County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Creation of an Unauthorized Dump	1	\$3,000	\$500	\$0	
Creation of an unauthorized Scrap Tire Site	1	\$3,000	\$500	\$0	
TOTAL PER FACTOR		\$6,000	\$1,000	\$0	\$7,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$525 <sup>1</sup>
	\$0

Economic Benefit (+)*	\$0
Amount of Initial Penalty	\$7,000
Total Adjustments (+/-)	\$525
<b>FINAL PENALTY</b>	<b>\$7,525</b>

Footnotes

1. Additive fine of five dollars (\$5) per tire

\* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.